

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Presently before the court is Plaintiff Gregory Lavelle Mays's Motion for Enlargement of Time (ECF Nos. 41, 42), filed on July 28, 2016.

## I. MOTION FOR ENLARGEMENT OF TIME

Additionally, Plaintiff requests a 60-day extension of time to serve Defendant Douglas C. Gillespie. Plaintiff does not state why additional time to serve this Defendant is needed, though the court understands Plaintiff to be asking for the extension to allow time for processing of his

1 application to proceed *in forma pauperis*. This is the court's understanding based on Plaintiff's  
2 previous filings in this case, in which he indicates he is seeking *in forma pauperis* status so officers  
3 of the court will issue and serve process in this case. (See Order (ECF No. 33) at 1:24-27.)

4 Plaintiff's deadline for serving Defendant Gillespie was June 13, 2016. (*Id.* at 3.)

5 Federal Rule of Civil Procedure 4(m) establishes the time for service on domestic  
6 defendants:

7 If a defendant is not served within 90 days after the complaint is filed, the court—  
8 on motion or on its own after notice to the plaintiff—must dismiss the action  
9 without prejudice against that defendant or order that service be made within a  
specified time. But if the plaintiff shows good cause for the failure, the court must  
extend the time for service for an appropriate period.

10 The court must extend the 90-day time limit of Rule 4(m) if the serving party shows good cause for  
11 failure to serve within 90 days. *Lemoge v. United States*, 587 F.3d 1188, 1198 (9th Cir. 2009)  
12 (citing the previous version of Rule 4(m) that required a defendant to be served within 120 days  
13 after the complaint is filed). If the serving party does not show good cause, the court has discretion  
14 to extend time for service, or to dismiss the complaint without prejudice. *In re Sheehan*, 253 F.3d  
15 507, 513 (9th Cir. 2001). The court's discretion to extend time for service, or to dismiss without  
16 prejudice for failure to timely serve, is broad. *Id.*

17 Courts must determine on a case-by-case basis whether the serving party has shown good  
18 cause. *In re Sheehan*, 253 F.3d at 512. Generally, good cause is equated with diligence. *Townsel*  
19 *v. Contra Costa Cnty., Cal.*, 820 F.2d 319, 320 (9th Cir. 1987). A showing of good cause requires  
20 more than inadvertence or mistake of counsel. *Id.* “[A]t a minimum, good cause means excusable  
21 neglect.” *In re Sheehan*, 253 F.3d at 512 (quotation omitted).

22 Given that Plaintiff did not request additional time to serve Defendant Gillespie until more  
23 than six weeks after court-ordered deadline of June 13, 2016 already had expired, the court finds  
24 that Plaintiff was not diligent in attempting to serve Defendant Gillespie and therefore has not  
25 demonstrated good cause to extend time to serve Defendant Gillespie. Regardless, under Rule 4,  
26 the court has discretion, even without good cause, to extend the time for service. Given the delays  
27 in receiving the documentation Plaintiff needed for his *in forma pauperis* application, the court will  
28 grant Plaintiff an additional 30 days from the date of this order to serve Defendant Gillespie.

1 Plaintiff is advised that failure to comply with this deadline or to timely request an extension of  
2 this deadline will weigh strongly against a finding of good cause in the future.

3 **II. APPLICATION TO PROCEED *IN FORMA PAUPERIS***

4 Based on the information regarding Plaintiff's financial status provided in his application to  
5 proceed *in forma pauperis*, the court finds Plaintiff is unable to prepay fees or provide security for  
6 them as set forth in 28 U.S.C. § 1915(a)(1). The court therefore will grant Plaintiff's application to  
7 proceed *in forma pauperis*. Although a prisoner who is granted *in forma pauperis* status typically  
8 must pay the filing fee in the form of several installments under § 1915(b), Plaintiff will not be  
9 required to pay an initial installment payment or any portion of the filing fee in this matter given  
10 that the filing fee was paid by Defendants upon removal.

11 **III. CONCLUSION**

12 IT IS THEREFORE ORDERED that Plaintiff Gregory Lavelle Mays's Motion for  
13 Enlargement of Time (ECF Nos. 41, 42) is GRANTED.

14 IT IS FURTHER ORDERED that Plaintiff Gregory Lavelle Mays must serve Defendant  
15 Douglas C. Gillespie by **November 7, 2016**

16 IT IS FURTHER ORDERED that Plaintiff Gregory Lavelle May's Application to Proceed  
17 *In Forma Pauperis* (ECF No. 44) is GRANTED.

18  
19 DATED: October 7, 2016

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21   
22 C.W. HOFFMAN, JR.  
23 UNITED STATES MAGISTRATE JUDGE  
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